

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

Implementation of the Local Competition
Provisions in the Telecommunications Act
of 1996

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CC Docket No. 96-98

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PETITION FOR RECONSIDERATION AND CLARIFICATION
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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SUMMARY

Intermedia Communications Inc. (“Intermedia”) submits that the Commission should reconsider its decision not to require the unbundling of packet switching and transport network elements. In failing to unbundle packet switching and transport elements, the Commission ignored the evidence submitted by Intermedia and e.spire which clearly demonstrated that denial of unbundled access to elements of the ILEC frame relay and ATM networks materially impairs the ability of competitors to offer frame relay services, and is inconsistent with the Commission’s decision in the *Advanced Services Second Report and Order*.

In addition, the Commission should open for public comment a portion of its local switching unbundling analysis. Specifically, in light of the gap in the record regarding the impact of utilizing zone 1 as the geographic unit upon which to base, in part, the local circuit switching unbundling exemption, the Commission should seek comment on the issue and issue a supplemental order defining the impact of rate zones consistently.

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PETITION FOR RECONSIDERATION AND CLARIFICATION

Intermedia Communications Inc. ("Intermedia"), by its attorneys, and pursuant to Section 1.106 of the Commission's Rules (47 C.F.R. Sec. 1.106) hereby respectfully petitions the Commission for reconsideration and clarification certain portions of its *Third Report and Order* in the above captioned docket.¹

I. INTRODUCTION

Intermedia Communications Inc. ("Intermedia") is a facilities-based competitive local exchange carrier ("CLECs") that offers a wide array of end-to-end data and voice services to business customers throughout the nation. Intermedia offers a variety of advanced telecommunications services, including asynchronous transfer mode ("ATM"), frame relay, integrated services digital network ("ISDN"), and Internet access, over its own data network. To date, Intermedia has deployed over 175 data switches and 29 voice switches throughout the country.

¹ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, (rel. Nov. 5, 1999) ("*Third Report and Order*"). Notice of the *Third Report and Order* appeared in the *Federal Register* on January 17, 2000.

Intermedia commends the Commission for the steps it took in its landmark *Third Report and Order* to ensure that robust competition continues to develop in the local exchange. The unbundling standards articulated by the Commission pursuant to Section 251(d)(2), which by and large reaffirm the obligation of ILECs to provide competitors with the vast majority of the critical UNEs they need to compete on a level playing field with the ILEC, have provided competitors with both the certainty they need to continue plowing millions of dollars into the construction of their own networks while at the time providing them with access to many of the important UNEs they require to compete head-to-head with incumbents.

As the Commission recognized, one of the fundamental considerations in fashioning the ‘necessary’ and ‘impair’ analysis was to ensure that “alternatives are actually available to the requesting carrier as a practical, economic, and operational matter...consider[ing] not only the direct costs, but also other costs and impediments associated with using alternative elements that may constitute barriers to entry,”² and not favoring one mode of entry over another. However, Intermedia respectfully submits that certain portions of the Commission’s *Third Report and Order* should be reconsidered and in some instances, clarified.

Specifically, the Commission should reconsider its decision not to require the unbundling of packet switching and transport network elements. In failing to unbundle packet switching and transport elements, the Commission ignored the evidence submitted by Intermedia and e.spire Communications, Inc. (“e.spire”) which clearly demonstrates that denial of unbundled access to elements of the ILEC frame relay network materially impairs the ability of competitors to offer frame relay services, and is in fact, anti-competitive. In addition to

disregarding the evidence on the record regarding the adverse effects caused denying competitors access to packet switching and transport elements resident in the ILEC network, new information has arisen subsequent to adoption of the Commission's *Third Report and Order* that the Commission should also consider. Specifically, the Commission must take into account the implications of the *Second Report and Order* in the Advanced Services proceeding.³ In addition, Intermedia submits that the Commission should clarify its position regarding the availability of the enhanced extended link ("EEL"). Furthermore, the Commission should initiate an expedited comment cycle to examine the use of rate zone 1 in connection with the Commission's local switched circuit unbundling rules in light of the ILECs' disparate definitions of rate zone 1. As set forth below, reconsideration and clarification of the Commission's *Third Report and Order* will ensure that robust competition continues to take root and thrive.

II. THE COMMISSION SHOULD RECONSIDER ITS DECISION NOT TO IDENTIFY FRAME RELAY ELEMENTS AS SEPARATE UNBUNDLED NETWORK ELEMENTS

In its *Third Report and Order*, the Commission declined to unbundle the packet switching functionality except in limited circumstances, and specifically declined Intermedia's request to establish a packet switching and frame relay UNEs.⁴ Intermedia submits that the Commission erred in declining to establish packet switching and frame relay UNEs both in light of the Commission's "impair" analysis, and in light of the information set forth by Intermedia

(...continued)

² *Third Report and Order*, ¶ 8.

³ See *In the Matter of Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket 98-147, *Second Report and Order* (rel. Nov. 9, 1999) ("*Second Advanced Services Order*").

⁴ *Third Report and Order*, ¶¶ 306, 312.

and e.spire in this proceeding. In addition, the Commission must reconsider its decision to take into account the implications of the *Second Report and Order* in the Advanced Services proceeding

A. The Unique Nature of Frame Relay and ATM Network Elements Warrant Definition as UNEs Under the Commission's "Impair" Analysis

In the *Third Report and Order* the Commission set forth its revised "impair" analysis. The Commission concluded that the failure to provide access to a network element would "impair" the ability of a requesting carrier to provide services it seeks to offer if "taking into consideration the availability of alternative elements outside the incumbent LEC's network, including self-provisioning, by a requesting carrier or acquiring an alternative from a third-party supplier, lack of access to that element materially diminishes a requesting carrier's ability to provide the services it seeks to offer."⁵ In considering whether lack of access to an element *materially diminishes* a carrier's ability to provide service, the Commission considers the extent to which alternatives to the element are available in the marketplace, considering cost, timeliness, quality, ubiquity, and impact on network operations.⁶

In extensive filings in the UNE Remand proceeding Intermedia, along with e.spire, demonstrated the need for the Commission to establish several data-specific UNEs to promote the deployment of advanced telecommunications capability,⁷ including ports on data

⁵ *Third Report and Order*, ¶ 51.

⁶ *See Third Report and Order*, ¶¶ 51-100; Rule 51.317(b).

⁷ *See e.g. Joint Comments of e.spire Communications, Inc. and Intermedia Communications Inc.*, CC Docket 96-98 (filed May 26, 1999); *Joint Reply Comments of e.spire Communications, Inc. and Intermedia Communications Inc.*, CC Docket 96-98 (filed June 21, 1999). *See Frame Relay and Data UNEs*, CC Docket No. 96-98, Ex Parte Position Paper of e.spire Communications, Inc. and Intermedia Communications Inc. (filed July 21, 1999).

switches and routers, as well as the associated connectivity between those ports appropriate to the type of packet-switched protocols used in frame relay, Asynchronous Transfer Mode (“ATM”) and Internet Protocol (“IP”) technologies. The record of this proceeding clearly establishes that the availability of such UNEs is necessary in order to ensure the competitive provision of advanced packet-switched data services. However, in the *Third Report and Order*, the Commission declined to require the unbundling of packet switching functionality generally, except that ILECs must provide requesting carriers with access to unbundled packet switching where the incumbent has placed its DSLAM in a remote terminal instead of at a central office.⁸ The Commission “reject[ed] e.spire/Intermedia’s request for a packet switching or frame relay unbundled network elements” reasoning that the establishment of such elements would violate the Commission’s principle of technological neutrality, and stated that Intermedia/e.spire had not provided “any specific information to support a finding that requesting carriers are impaired without access to unbundled frame relay.”⁹ In effect, the Commission’s decision not to require unbundling of frame relay and ATM network elements essentially treats those elements as identical to DSLAMs. Intermedia submits that the Commission was correct to require that DSLAMs be unbundled in certain instances. However, the Commission’s decision to, in effect, equate frame relay and ATM network elements with the DSLAM functionality, aside from being inherently wrong as a factual matter, misapplies the Commission’s ‘impair’ standard and disregards the detailed information provided by Intermedia and e.spire on the record below. Therefore, Intermedia respectfully requests that the Commission reconsider its decision.

⁸ *Third Report and Order*, ¶¶ 306, 313.

⁹ *See id.*, ¶ 312.

Frame relay and ATM functionalities do not consist merely of switching elements, but rather, are made up of combinations of data switching and transport that should be considered UNEs in their own right. Packet-switched networks do not follow the same hierarchical switching structure as ILEC circuit-switched networks, in which end-users are connected to each other through circuits dedicated, for the duration of communications, to those communications. Instead, a data customer is connected to a distributed network of interconnected data switches and/or routers and transport links. This network is called a “cloud” because a customer’s data transmissions are disassembled into numerous data packets prior to transmission. In a single transmission, the data may transit multiple data switches (in the case of frame relay and ATM) or routers (in the case of IP), which provide a variety of functions, including aggregating, hubbing, routing, and switching. Packets, which constitute a single transmission, may travel along a myriad of differing paths within this “cloud” to reach the ultimate point of termination, none of which is, at any point in time, dedicated to the communication as in the circuit-switched network. Rather, each part of the “cloud” may, and typically does, support packets from a large number of transmissions simultaneously. In addition, in order to provide the redundancy and alternate transmission paths that allow the most efficient routing, data carriers often interconnect their networks at multiple points. The net result of these features is that data networks achieve considerable efficiencies over circuit-switched networks.

In many instances, existing UNEs are available to provide the network elements that competitive carriers require to support the provision of data services. However, even if dedicated high capacity transport at DS1, DS3 and OCn speeds, and digitally conditioned copper loops or high speed loops are available as UNEs, competitive carriers are impaired in their ability

to provision data services unless they also have access to the efficiencies that are offered by the connectivity between points within the distributed data networks of ILECs.¹⁰ ILECs can piggyback upon their existing network architectures, exploiting the distribution of central offices and interoffice transport capacity, to deploy a distributed, efficient packet-switched networks with markedly fewer obstacles than CLECs. Thus, the Commission should require that ILECs unbundle those functions that are unique to data networks, and those functionalities should be established as new data UNEs.

B. The Structure of ILEC Frame Relay Tariffs Clearly Demonstrate That Packet Switching and Transport Elements Should be Unbundled

The structure of ILEC frame relay tariffs remove any doubt that the transport and data switching functionalities that comprise frame relay and ATM warrant definition as UNEs. Intermedia's efforts to expand the reach of its broadband and frame relay networks through interconnection with and unbundled access to the ILECs' frame relay networks is an absolute necessity. Through interconnection, an Intermedia frame relay customer can exchange data with an ILEC frame relay customer. Through unbundled access to frame relay network elements at TELRIC-based prices, Intermedia can provide additional customers efficient access to Intermedia's own frame relay networks by making an intermediate connection between the customer and frame relay network elements in an ILEC's network that are geographically closer to the end user. In cases where frame relay customers are geographically closer to an ILEC

¹⁰ The Commission recognized this fact in the *Third Report and Order*, stating that "one important purpose of the unbundling provisions of the Act is to permit competitive LECs to compete with the same economies as the incumbents, especially in the early stages of local competition."

frame relay switch than they are to Intermedia's frame relay switch, access to ILEC frame relay network elements provides a cost-effective alternative to traditional transmission UNEs.

As Intermedia explained on the record below, Intermedia has been forced to order frame relay interconnection (in the form of various network elements) out of the ILECs' federal access tariffs – simply to interconnect and deliver frame relay traffic headed to an ILEC frame relay end user. Obviously, the ILECs' federal access tariffs do not offer a means of interconnection compliant with the Commission's TELRIC pricing standard for interconnection and UNEs. Indeed, the inflated federal access tariff rates that Intermedia is forced to pay are not the least bit conducive to expanding the reach of competitive broadband frame relay networks to more Americans.

Examination of the ILEC's frame relay tariffs make clear that the functions necessary to provide frame relay and ATM are not merely switching elements, and should be available on an unbundled basis. This fact is best demonstrated by the fact that in every ILEC frame relay tariff, the transport element is distance insensitive. However, because the Commission has declined to establish frame relay UNEs, CLECs must utilize distance sensitive transport that reflect the same kinds of distance pricing structure as is reflected in ILEC special access tariffs to expand their frame relay networks and compete with ILEC service. But obviously, it will never be cost-effective to utilize exorbitantly priced distance sensitive transport to compete against ILEC frame relay service offerings. Furthermore, the bottom line result of denying unbundled access to packet switching elements is that the Commission's goal of "opening all [telecommunications] markets" to competition and encouraging the rapid introduction of local competition to the benefit of the greatest number of consumers is

frustrated.¹¹ Obviously, CLECs will never be able to effectively compete on a level playing field against ILEC frame relay service offerings unless they have unbundled access to the essential portions of the ILEC frame relay network at TELRIC prices. As Intermedia demonstrated on the record below, the elements in ILEC frame relay and ATM cell relay service tariffs, although varying in name from ILEC to ILEC, clearly lend themselves to unbundling.¹²

Clearly, frame relay and ATM UNEs meet the “impair” test. In conjunction with their own packet switches and other facilities, competitive data service providers will be able to connect these new UNEs with loops and transport – either their own, ILEC provided, or purchased from a third-party vendor – to complete virtual circuits. These new data UNEs in combination with loops, transport and possibly other UNEs will obviate the need for CLECs instantly to deploy facilities to an area comparable to that of the ILECs’ distributed data networks. Data CLECs will be able to utilize the efficiencies uniquely offered by these new UNEs to help usher in robust competition in the advanced data services market. Without the availability of these data UNEs, CLECs in all cases will be forced to back-haul unbundled loops to their own data switches on dedicated transport facilities, which are less efficient for purposes of data transmission. The difficulties that CLECs have had in extending their data services through interconnection arrangements cannot be overcome through the provision of reasonably available and economic substitutes for these UNEs because none exist. Only through the provision of unbundled access to frame relay UNEs at TELRIC prices can CLECs provide additional customers with efficient access to their own frame relay networks.

¹¹ *Third Report and Order*, ¶ 107.

¹² *See Frame Relay and Data UNEs*, CC Docket No. 96-98, Ex Parte Position Paper of e.spire Communications, Inc. and Intermedia Communications Inc.(filed July 21, 1999).

Therefore, Intermedia submits that the Commission should reconsider its decision not to require that ILECs make available on an unbundled basis: (1) the ports on their data switches or routers; and (2) the connectivity (including the switching fabric and associated software functions) between such ports. This connectivity should be available at a series of pre-defined committed information rates.

C. The Commission's Decision Not To Unbundle Packet Switching and Transport Is Inconsistent With Its Decision To Apply the 251(c)(4) Wholesale Discount to Advanced Services

In addition to its inconsistency with the record evidence in this proceeding, the Commission's decision not to require the unbundling packet switching elements is wholly inconsistent with the Commission's decision in its *Second Advanced Services Order*, which was released only days after the *Third Report and Order*. In its *Second Advanced Services Order*, the Commission concluded that advanced services "sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligations, without regard to their classifications as telephone exchange service or exchange access service."¹³ The policy goal underlying the Commission's decision was a desire to benefit consumers "through lower prices and greater and more expeditious access to innovative, diverse broadband applications by multiple providers of advanced services."¹⁴ In concluding that advanced services are subject to the wholesale discount the Commission implicitly and explicitly concluded that *all* Section 251 obligations attach to *all* advanced services, including packet

¹³ *Advanced Services Order*, ¶ 3

¹⁴ *Advanced Services Order*, ¶ 20.

switching technologies, such as frame relay and ATM.¹⁵ The Commission explained its decision as follows:

By interpreting “at retail” in the manner described above, we give it a meaning consistent with the primary objective of section 251: opening the local exchange market to competition in all services to ensure that consumers reap the benefits of broad-based and long lasting competition. *In particular, section 251 requires all LECs to provide nondiscriminatory access to their network facilities, thereby allowing competing carriers to enter the local exchange and exchange access markets by purchasing parts of the incumbent’s network or by reselling the incumbent’s services at wholesale rates.* Section 706 sets forth the complementary goal of facilitating investment and deployment of innovative technologies, specifically, those that provide advanced telecommunications capabilities, to all consumers.

The conclusion that 251(c)(4) resale obligations apply to advanced services also necessarily leads to the conclusion that ILEC data services are also subject to the unbundling obligations of section 251(c)(3). Section 251(c)(4) imposes upon ILECs the duty to offer for resale *all* “telecommunications services” that the carrier provides at retail to subscribers who are not telecommunications carriers.¹⁶ The Commission has determined that advanced services offered by incumbent LECs are “telecommunications services” under the plain terms of the Act.¹⁷ Similarly, section 251(c)(3) of the Act requires ILECs to provide any requesting carrier nondiscriminatory unbundled access to network elements in order to provide any “telecommunications service.” Thus, consistency requires that the Commission apply not only

¹⁵ See *Advanced Services Order*, n. 2: “For purposes of this order we use the term ‘advanced services’ to mean high speed, switched, broadband, wireline telecommunications capability that enables users to originate and receive high-quality voice, data, graphics or video telecommunications using any technology. The terms ‘broadband’ is generally used to convey sufficient capacity—or bandwidth—to transport large amounts of information...Today’s broadband services include...services based on packet switched technology.”

¹⁶ *Advanced Services Order*, ¶ 4.

¹⁷ *Advanced Services Order*, ¶ 5.

the resale obligations of Section 251 to advanced services offered by ILECs, but should also require ILECs to unbundle the elements necessary to provide advanced services such as frame relay and ATM.

Furthermore, the Commission, upon reconsideration, should clarify that competitors may resell ILEC frame relay services at the wholesale discount prescribed by the respective state commission. As Intermedia made clear on the record below, the data UNEs described herein are not the equivalent of total service resale. Although CLECs should be entitled to resell all end user retail service offerings, pursuant to Section 251(c)(4), Intermedia does not intend to simply re-brand the ILEC's frame relay product. Rather, Intermedia intends to combine ILEC frame relay UNEs with its own frame relay switching and transport facilities in order to provide customers with frame relay service. Thus, a CLEC's end user offering will not duplicate the ILECs' retail service offerings because frame relay UNEs would be used in conjunction with CLECs' own self-provisioned frame relay network elements.

The Commission's determination, subsequent to the Commission's *Third Report and Order*, that advanced services offered by ILEC fall within the purview of Section 251 necessitates reconsideration by the Commission in light of the new facts, not previously presented (or available for presentation to the Commission) that have come to light.¹⁸ While Intermedia disagrees with the Commission's determination that not enough "specific information [on the record] to support a finding that requesting carriers are impaired without access to unbundled frame relay,"¹⁹ Intermedia respectfully submits that to the extent the Commission

¹⁸ See 47 C.F.R. § 1.106.

¹⁹ *Third Report and Order*, ¶ 312.

believes the record is not developed adequately to decide this issue, it should request additional comment from the industry and issue a supplemental order once the record has closed.

III. THE COMMISSION SHOULD CLARIFY ITS RULES REGARDING THE AVAILABILITY OF ENHANCED EXTENDED LINKS

In the *Third Report and Order* the Commission determined that as a general matter, unbundled local circuit switching must be provided on an unbundled basis by the ILEC.²⁰ However, the Commission, in order to “establish a more narrowly tailored rule to reflect significant marketplace developments” found that local circuit switching need not be provided in the following circumstances where four criteria are met. Specifically, local circuit switching need not be provided: (1) in the top 50 metropolitan statistical areas (MSAs); (2) density zone 1 within the top 50 MSAs; (3) when end user customers serve four or more access lines; and (4) where ILECs have provided nondiscriminatory, cost-based access to the enhanced extended link (“EEL”).²¹

Based on the clear language of the *Third Report and Order* it is clear that EELs, pursuant to Rule 315(b), must be made available on an unrestricted basis at UNE prices regardless of whether or not the ILEC meets the criteria to eliminate local switching.²² However Intermedia submits that in order to prevent ILEC gamesmanship of the EEL rules, which several carriers are already undertaking, the Commission should clarify that when ILECs eliminate the local switching element pursuant to Rule 51.319(c)(1)(B), they must make EELs available

²⁰ *Third Report and Order*, ¶ 253.

²¹ *Third Report and Order*, ¶¶ 253, 276-299.

²² *Third Report and Order*, at ¶¶ 486-89.

regardless of whether or not those circuits (i.e. the loop and transport elements) were previously combined as special access circuits.

The Commission's local switching 'impair' analysis demands this result. In its analysis the Commission concluded that "without access to unbundled local circuit switching, requesting carriers are impaired in their ability to serve the mass market."²³ The only alternative to local circuit switching that provides the same kind of ubiquitous alternative for competitors is the EEL, and without unfettered EEL availability CLECs will be *materially impaired*. Indeed, on a number of occasions, the Commission has recognized that "[t]he ability of requesting carriers to use unbundled network elements, including combinations of unbundled network elements, is integral to achieving Congress's objective of promoting rapid competition in the local telecommunications market."²⁴ Without clarification of the Commission's rules regarding EELs, ILECs will have an untempered ability to impair CLEC provisioning of all telecommunications services, and especially advanced services.

In fact, ILEC gamesmanship of the EEL rules has already begun in the context of interconnection negotiations. Many ILECs now claim that the *Third Report and Orders*' requirements vis-à-vis the EELs are unclear. In order to eliminate any further claims of confusion or ambiguity with respect to the Commission's EEL rules, the Commission should clarify its rules by precisely defining the scope of the ILECs obligations to provide the EEL. Accordingly, the Commission should issue a *Second Supplemental Order* clarifying that: (1) ILECs must, pursuant to Rule 315(b), make available at UNE prices loop and transport elements

²³ *Third Report and Order*, ¶ 291.

²⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket 96-98, *Second Further Notice of Proposed Rulemaking* (rel. Apr. 16, 1999), ¶ 2.

that are currently combined and purchased through ILEC special access tariffs;²⁵ (2) a prerequisite to the elimination of the unbundled local switching element is the availability of new EEL combinations throughout the ILEC's service territory; and (3) ILECs will be allowed to eliminate the local switching UNE only in the event that they make EELs available as *new* combinations of UNEs not previously combined as special access circuits; (4) competitors may use loop and transport UNEs to provide customers with access to *all* advanced services, such as frame relay, ATM, and xDSL.²⁶ At bottom, the Commission's *Second Supplemental Order* should foreclose all ILEC claims that their obligations under the Commission's EEL rules are unclear.

IV. THE COMMISSION SHOULD INITIATE AN EXPEDITED COMMENT CYCLE TO ADDRESS THE ILECs' DISPARATE DEFINITIONS OF RATE ZONES

In the *Third Report and Order* the Commission concluded that order to "establish a more narrowly tailored rule to reflect significant marketplace developments" local circuit switching need not be provided where four criteria are met: (1) in the top 50 MSAs; (2) in density zone 1 within the top 50 MSAs; (3) when end user customers serve four or more access lines; and (4) where ILECs have provided nondiscriminatory, cost-based access to EEL.²⁷ The Commission concluded that "*based on the limited evidence in the record*, we believe that density

²⁵ *Third Report and Order*, ¶ 480.

²⁶ In singling out DSL, stating that a "competitive carrier is entitled to purchase unbundled loops in order to provide advanced services (*e.g.* interstate special access xDSL service.)" the Commission's *Supplemental Order* allowed the ILECs to argue that DSL service is the only application for which loop/transport combinations may be used. *See Implementation of the Local Telecommunications Provisions of the 1996 Act*, CC Docket No. 96-98, *Supplemental Order*, (rel. Nov. 24, 1999) ("*Supplemental Order*").

²⁷ *Third Report and Order*, ¶¶ 253, 276-299.

zone 1 closely reflects the wire centers where competitive LEC switches are located....We recognize that only one commenter, BellSouth, provided detailed data to describe where requesting carriers have deployed switches in density zone 1.”²⁸

While Intermedia agrees that the Commission may have had reasonable basis to utilize rate zone 1 as a proxy for determining the extent to which the deployment of competitive LEC switches has occurred, the use of rate zones is problematic to the extent that the ILECs have disparate definitions of rate zone 1. For example, as the Commission noted, BellSouth defines rate zone 1 very broadly, including the entire Atlanta metropolitan area, and encompassing within zone 1 suburbs like Buckhead. In contrast, Bell Atlantic defines rate zone 1 very narrowly. For example, Baltimore City has only one central office in its rate zone 1. As a result of the wildly varying definitions of rate zones among ILECs, CLECs must adapt their network topology to adapt to arbitrary geographic whims of a particular ILEC.

Clearly, the Commission failed to anticipate or appreciate the adverse effect that its decision to utilize rate zone 1 as one of the criteria in its unbundled local switching analysis would have on competitive carriers. As the Commission acknowledged, the record on the use of density zone 1 as one of the criteria in determining when the Commission’s local switching exception is implicated was very limited.²⁹ To address the gap in the record regarding the impact of utilizing zone 1 for the geographic market definition in conjunction with the Commission’s local circuit switch analysis, the Commission should require all Tier 1 ILECs to provide detailed information regarding the deployment of CLEC switches in zone 1. In addition, the Commission should put out for public comment the issue of whether zone 1 is the appropriate geographic unit

²⁸ *Third Report and Order*, ¶ 285.

upon which to base, in part, the local circuit switching exemption in light of the new information. Once the Commission has assembled a full and complete record, it should then issue a supplemental order that defines the impact of rate zones consistently.

V. CONCLUSION

For the foregoing reasons, Intermedia respectfully submits that the Commission should reconsider and clarify its *Third Report and Order* to make it consistent with the Commission's rules regarding the unbundling obligations attaching to advanced services elements, and to foreclose the gaming of the Commission's EEL rules.

Respectfully submitted,



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(...continued)

²⁹ *Id.* (The Commission noted that “only one commenter, BellSouth, provided detailed data to describe where requesting carriers have deployed switches in density zone 1.”)